

UNITED STATES DISTRICT COURT

for the

Northern District of Indiana

United States of America

v.

Josiah Phillips

Case No.

2:20 MJ 214 SEALED

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 27, 2019 in the county of Porter in the
Northern District of Indiana, the defendant(s) violated:

Code Section

18 U.S.C., Sect. 2251(a)

Offense Description

Production of Child Pornography

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

☐ Continued on the attached sheet.

Marc Rochon

Complainant's signature

Marc Rochon, Special Agent, HSI

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/09/2020

City and state: Hammond, Indiana

s/John E. Martin

Judge's signature

MAGISTRATE JUDGE, JOHN E. MARTIN

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Marc Rochon, Special Agent with Homeland Security Investigations (HSI), SAC Chicago, Hammond Group, being duly sworn, depose and state as follows:

INTRODUCTION

1. I have been a Special Agent with HSI since July of 2007 and have been assigned to the Hammond Group since 2009. Prior to my employment as a Special Agent I was a police officer in Valparaiso, Indiana for about 10 years. I have investigated federal criminal violations related to technology and cyber-crime, child exploitation, and child pornography. I have gained experience through training with HSI and everyday work conducting these types of investigations. I have received training in the area of child pornography and child exploitation and have had the opportunity to observe and review numerous examples of child pornography (as defined in 18 U.S.C. § 2256) in all forms of media including computer media. I am a law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7), and am authorized to investigate violations of the laws of the United States and to execute warrants issued under the authority of the United States.

2. What follows are the facts that I believe are necessary to establish probable cause for the issuance of a criminal complaint alleging that on or about September 27, 2019, JOSIAH PHILLIPS (hereafter “PHILLIPS”) violated Title 18, United States Code, Section 2251(a) by knowingly employing, using, persuading, inducing, enticing, and coercing a minor child to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing a visual depiction of such conduct, where the visual depiction was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means.

3. The facts set forth herein are either personally known to me or have been told to me directly by law enforcement officers and others with whom I have worked on this investigation. I have not included in this affidavit each and every fact known to me concerning this investigation.

STATUTORY AUTHORITY

4. This investigation concerns alleged violations of 18 Title U.S.C. §§ 2251(a) and 2252, relating to material involving the sexual exploitation of minors.

5. 18 U.S.C. § 2251(a) makes it a federal crime to attempt to knowingly employ, use, persuade, induce, entice or coerce a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct where such visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer.

6. Title 18, United States Code, Section 2256(2)(A) defines “sexually explicit conduct” as “actual or simulated (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or (v) lascivious exhibition of the genitals or pubic area of any person.”

7. The Seventh Circuit has adopted a six-factor test for determining whether an image qualifies as a “lascivious exhibition of the genitals or pubic area of any person.” See *United States v. Moore*, 215 F.3d 681, 686 (7th Cir. 2000). The six factors, originally set forth in *United States v. Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986), are: (1) whether the focal point of the visual depiction is on the child’s genitalia or pubic area; (2) whether the setting of the visual depiction is sexually suggestive, i.e., in a place or pose generally associated with

sexual activity; (3) whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child; (4) whether the child is fully or partially clothed, or nude; (5) whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity; and (6) whether the visual depiction is intended or designed to elicit a sexual response in the viewer. No one factor is determinative, but not all factors need be satisfied in finding a depiction to be lascivious. *Dost*, 636 F. Supp. at 832.

8. “Minor” means any person under the age of 18 years. See 18 U.S.C. § 2256(1).

9. “Visual depictions” include undeveloped film and videotape, and data stored on computer disk or by electronic means, which are capable of conversion into a visual image. See 18 U.S.C. § 2256(5).

FACTS ESTABLISHING PROBABLE CAUSE

10. On September 24, 2020, the Indiana State Police received a cyber tip from the National Center for Missing and Exploited Children (NCMEC) regarding a subject allegedly in possession of child pornography. Dropbox, a company that offers a cloud storage service, reported to NCMEC that on or about June 13, 2020 they became aware of an unknown user uploading media files containing child pornography to a Dropbox account. Dropbox included the following identifying information associated to the suspect Dropbox account:

Email Address: jklan385@gmail.com (Verified 03-18-2019 21:54:30 UTC)
Screen/User Name: John Kramer
ESP User ID: 2041377952
IP Address: 73.45.128.209 (Login) 06-06-2020 04:56:31 UTC

11. Dropbox submitted to NCMEC fifteen (15) media files from the suspect Dropbox account. The following are descriptions of two (2) of the media files viewed by Indiana State Police:

a. Video titled: 11yo lockie and 16yo girl suck and kiss (SC 2014).mkv:

This video depicts an unknown white male child and an unknown white female child. The male child appears to be prepubescent. The children are on a bed and the male child pulls his pants down, exposing his penis. The female child puts the penis in her mouth and sucks on it. This is done multiple times with different camera angles. At the end of the video, the male and female child are kissing. The video is 14 minutes and 42 seconds in length.

b. Video titled: video-1505086294.mp4: This video depicts an unknown

white male child and an unknown white person. The male child appears to be prepubescent. The unknown person places the male child's penis in their mouth and sucks on it. The video is 1 minute and 31 seconds in length.

12. Upon review of the media files, it was determined they were apparent child pornography, depicting children under the age of 18 exhibiting sexual conduct and exposing their genitals.

13. An open source check revealed that Comcast was the service provider for the IP address 73.45.128.209. On September 25, 2020, a Federal Summons was issued to Comcast requesting subscriber information for IP address 73.45.128.209. Comcast replied with the following subscriber information:

Subscriber Name: Sharon Phillips
Service Address: 666 E 950 N
Westville, IN 46391
Telephone #: (219) 921-6687

14. On June 6, 2020, IP address 73.45.128.209 was the last IP address to access the Dropbox account before Dropbox identified the files containing child exploitation videos and reported the incident to NCMEC. 15. Search warrants for the content of the suspect Dropbox

account and the email account associated with the Dropbox account (jklan385@gmail.com) were served on Dropbox and Google.

16. There were thousands of video files in the Dropbox account, most pornographic in nature, including bestiality videos and child pornography videos with children ranging from as young as approximately 5 years of age to children in their early to mid-teens. In a folder titled “best,” there were several image and video files of a young girl, approximately 7 years old, who was sleeping on a couch. The first of several pictures in a series of images and videos, showed a girl wearing a white shirt with black stripes, asleep on the couch. Then an image titled 20190927_012617 showed a small portion of a white male’s face, who is putting his hand down the front of the sleeping girl’s shorts, while taking a “selfie” type picture. It should be noted that the generic file name for this image appears to be the date and time generated by the cell phone when the picture was taken. This naming structure is consistent with all the other pictures and videos in this series. Below are the files that contain images or video footage of what has been determined to be two separate young girls between the ages of 5 and 7 being sexually exploited by an adult male subject. According to the generic file names that coincide with the file properties, all the pictures and videos were taken of the girls were on September 27, 2019 between approximately 1:09 am and 6:51 am.

a. A video titled 20190927_022458 is 2 minutes 36 seconds in length and shows a young white female approximately 7 years old with medium shoulder length blonde hair. The girl is lying asleep on a black faux leather couch, which has much of the leather material peeled off. There is a large pink pillow and multi-colored tie-dyed blanket on the couch. The girl is wearing a short sleeve white shirt with black stripes and white shorts with rainbow color stripes. The person filming appears to be an adult

white male, presumably the same adult male who took the “selfie” picture described above. The male subject is using his hand to repeatedly rub the young girl’s vagina and buttocks over her shorts. Periodically, the girl moves around, but the male subject continues to rub the girl’s genital area once she stops.

b. Image titled 20190927_064348 shows the same girl described above, who appears to be asleep. An adult male subject is pressing his erect penis against her mouth.

c. Video titled 20190927_064833 is 57 seconds in length and shows the same girl described above on the same couch. An adult male subject is continually rubbing his erect penis on the girl’s face and lips while she is asleep.

d. Video titled 20190927_065136 is 8 seconds in length and shows a different girl asleep on a couch with a multi-colored quilt-style blanket that appears to be in the same room as the videos and pictures described above. The white female is approximately 5 years old, with light blonde shoulder length hair. The girl is wearing a pink, white, and purple colored short sleeve shirt. As the girl sleeps on the couch and an adult male films his erect penis over the girl’s head.

17. Your affiant checked the file properties of the above-described images. The meta-data for the image files shows the pictures were taken with a Samsung Model SM-G973U cell phone, also referred to as the Samsung Galaxy S10. This make/model information is not available for the video files. However, the generic file-naming structure for the video files is the same as for the image files. In my training and experience, I believe these video and image files were all produced by the same person, using the same Samsung cell phone, during the same time frame.

18. A review of other files in the Dropbox account that had the same generic file naming structure generated by the Samsung cell phone showed an identifiable male subject in several of the images and videos. I identified this subject as JOSIAH PHILLIPS (PHILLIPS) and, based on my training and experience, I believe Phillips to be involved in the production of child pornography.

19. The identification of PHILLIPS was based on several factors. The search warrant return from Google regarding jklan385@gmail.com, which is the email address associated with the Dropbox account, listed the name on the email account as “Joe Phillips,” which I believe is short for Josiah Phillips. Additionally, the phone number used to set up the Gmail email account was 219-229-7743 which, according to an AT&T summons return, belongs to PHILLIPS.

20. Screen shots of the male subject in videos created by the Samsung cell phone, were run through facial recognition software and provided a possible match of PHILLIPS. Your affiant also matched tattoos seen on the male subject in the non-child exploitation videos produced by the Samsung cell phone, with previous inmate booking pictures showing PHILLIPS’ tattoos.

21. A Google search for the moniker “jklan385,” which is used in PHILLIPS’ email address, resulted in several forum posts from username “jklan385” on a website called xnxx.com. The website xnxx.com appears to be a website that hosts personal ads for people wanting to meet for sexual reasons. The profile for username “jklan385” is a nude white male taking a “selfie” type picture in a mirror and indicates the person has been a member since October 16, 2019. The tattoo on the chest of the white male subject appears to match PHILLIPS’ chest tattoo. A review of a particular post from username “jklan385” shows a

picture of PHILLIPS taking another nude selfie in front of a mirror in which he is identifiable by his face and chest tattoo. In this picture, I can see the phone PHILLIPS is using to take the photo in the mirror reflection and observed that his cell phone has a horizontal row of cameras consistent with the Samsung Model SM-G973U Galaxy S10, which is the same make and model of cell phone used to produce the child pornography images and videos of the two young girls described above.

22. According to a public records database search, PHILLIPS currently resides at 280 S. Mineral Springs Road, Apartment 1, Porter, Indiana (SUBJECT PREMISES). On December 4, 2020, investigators drove past the SUBJECT PREMISES. A green Jeep Wrangler with an Indiana license plate of 762TPR was parked in a parking area on the south side of the residence. The license plate is registered to PHILLIPS and Angela Nelson. Additionally, PHILLIPS has the SUBJECT PREMISES listed as his address with the Porter County prosecutor's office.¹

23. On December 7, 2020, investigators conducted a ruse check at the SUBJECT PREMISES to help determine the exact apartment in which PHILLIPS resides and confirm that he still resides there. Agents knocked on the door of apartment number 1 and heard someone moving around. After several minutes, they heard a male subject say he doesn't appreciate this. Your affiant began talking to the subject through the closed door. Eventually the subject opened the door and your affiant identified him as PHILLIPS.

CONCLUSION

24. Based on the above facts, I believe probable cause exists for the issuance of a criminal complaint charging that on or about September 27, 2019, PHILLIPS violated Title

¹ Phillips has pending felony intimidation and misdemeanor criminal mischief charges.

18, United States Code, Section 2251(a) by knowingly employing, using, persuading, inducing, enticing, and coercing a minor child to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing a visual depiction of such conduct, where the visual depiction was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means.


25. I therefore respectfully request that the attached warrant be issued authorizing said complaint.

FURTHER AFFIANT SAYETH NAUGHT.

Marc Rochon

Marc O. Rochon
Special Agent
Homeland Security Investigations

Sworn and subscribed before me this 9TH day of December, 2020.

The seal of the United States District Court for the Northern District of Indiana is a circular emblem. It features an eagle with spread wings perched on a shield with vertical stripes. The shield is set against a background of a sunburst. The words "UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA" are inscribed around the perimeter of the seal, with a small star at the bottom center.
s/John E. Martin

John E. Martin
U.S. Magistrate Judge
Northern District of Indiana